

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

BKY 20-31858

Chapter 12

Buehring Properties LLC,

Debtor.

NOTICE OF HEARING AND MOTION FOR DISMISSAL

TO: All creditors and parties in interest pursuant to Local Rule 2002-4.

1. Kyle L. Carlson, Chapter 12 Trustee, moves to dismiss this case.
2. The Court will hold a hearing on this motion at 1:30 p.m. on Thursday, December 3, 2020, in Courtroom 7 West, 7th Floor, U.S. Courthouse, 300 South 4th Street, Minneapolis, MN 55415.
3. Any response to this motion must be filed and served not later than Saturday, November 28, 2020, which is five days before the time set for the hearing (including Saturdays, Sundays and legal holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**
4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334. The motion is brought pursuant to 11 U.S.C. § 1208, Bankruptcy Rule 1017, and Local Rule 1017-2. This case is pending before this Court.
5. The debtor has not established that it is eligible for Chapter 12 relief as the debtor's sole source of income is from the rental of farmland. *See* 11 U.S.C. 101(18)(B).
6. The Trustee has requested monthly operating reports from the debtor. The Trustee has not received that information and as a result the Trustee has been unable to adequately monitor the debtor's farming operation. This failure is grounds dismissal of the case. *See In re Ventura*, 375 B.R. 103, 109 (Bankr. E.D.N.Y. 2007) (a trustee's inability to effectively administer the estate due to a debtor's lack of cooperation constitutes "cause" for dismissal); *In re Dickenson*, 517 B.R. 622 (Bankr. W.D. Va., 2014) (dismissing a chapter 12 case based on, *inter alia*, the debtor's failure to comply with orders of the Court and failing to supply the Court with monthly operating reports).

WHEREFORE, the Trustee moves the Court for an order dismissing the case and such other relief as may be just and equitable.

Dated: 11-3-20

/e/ Kyle L. Carlson

Kyle L. Carlson

Chapter 12 Trustee

PO Box 519

Barnesville, MN 56514

218-354-7356

VERIFICATION

I, Kyle L. Carlson, Chapter 12 Trustee, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: 11-3-20

/e/ Kyle L. Carlson
Kyle L. Carlson, Trustee

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Case No. 20-31858

Chapter 12

Buehring Properties LLC,

Debtor.

MEMORANDUM OF FACTS AND LAW

I. FACTS

The facts supporting the motion are set forth in the attached verified motion. In addition, the Trustee also relies on the representations made by the debtor at the 341 meeting of creditors and in the debtor's filed schedules.

II. CHAPTER 12 ELIGIBILITY

A debtor must be a "family farmer" as defined in the bankruptcy code to qualify for Chapter 12. 11 U.S.C. § 109(f). A family farmer can be an individual, an individual and spouse, a corporation, or a partnership. 11 U.S.C. § 101(18). The debtor is a partnership, therefore 11 U.S.C. § 101(18)(B) applies. Under that provision, a partnership is a family farmer if the following conditions are met:

1. more than 50 percent of the outstanding stock or equity is held by one family, or by one family and the relatives of the members of such family;
2. such family or such relatives conduct the farming operation;
3. more than 80 percent of the value of its assets consists of assets related to the farming operation;
4. its aggregate debts do not exceed \$4,031,575 and not less than 50 percent of its aggregate non-contingent, liquidated debts (excluding a debt for one dwelling which is owned by such corporation or partnership and which a shareholder or partner maintains as a principal residence, unless such debt arises out of a farming operation), on the date the case is filed, arise out of the farming operation owned or operated by such corporation or such partnership.
5. if such corporation issues stock, such stock is not publicly traded.

11 U.S.C. § 101(18)(B). The burden of establishing these conditions lies with the debtors who voluntarily filed under chapter 12. *In re Tim Wargo & Sons, Inc.*, 869 F.2d 1128, 1130 (8th Cir. 1989) (the burden of establishing eligibility in chapter 12 lies with the party filing the bankruptcy petition); *Haden v. Pelofsky*, 212 F. 3rd 466 (8th Cir. 2000).

The "conduct" element of section 101(18)(B) serves to exclude from chapter 12 eligibility those corporations which bear an attenuated connection with the farming operation itself. *See In re Mary Freese Farms, Inc.*, 73 B.R. 508, 511 (Bankr. N.D. Iowa 1987) (where

tenant farmer “makes all of the management decisions and does all of the ‘hands-on’ planting and harvesting,” corporate debtor does not “conduct” the farming operation). The “conduct” eligibility requirement for corporate debtors and the “engaged in” eligibility requirement appear to be nearly, if not completely, identical. Many of the issues, such as whether the farming operation must actually continue post-petition, are also the same. *See In re Mikkelsen Farms, Inc.*, 74 B.R. 280, 285 (Bankr. D. Or. 1987) (though corporate debtor leased all of its farmland in crop year 1987, debtor was eligible for chapter 12 relief because it, through its principals, had planted and harvested crops in 1986, the year in which it filed its petition).

In this case, it does not appear that the debtor is “engaged in” or has a farming operation for its family owners to conduct. The debtor has not filed or supplied its tax returns as requested by the Trustee and the Trustee has not received any information indicating that the debtor has historically conducted a farming operation. Moreover, the Trustee has been advised that, as of the date the case was filed, a separate entity – Buehring Farms, LLC – was the operating entity conducting a farming operation upon the debtor’s real estate. According to testimony from Chad Buehring, an owner of the debtor, the only source of income for Buehring Properties, LLC is from the rental of farmland. Rental income, without any involvement in farming operation by the debtor, is income not derived from a debtor’s farming operation. *See In re Easton*, 883 F.2d 630, 636 (8th Cir. 1989). In this case, the debtor entity is not engaged in the farming operation. As such, the debtor does not appear eligible for Chapter 12.

III. CONCLUSION

Given the foregoing, the Trustee puts the debtor to its burden to demonstrate eligibility for Chapter 12.

Dated: 11-3-20

/s/ Kyle L. Carlson
Kyle L. Carlson
Chapter 12 & 13 Trustee
PO Box 519
Barnesville, MN 56514

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

BKY 20-31858

Chapter 12

Buehring Properties LLC,

Debtor.

ORDER

This case is before the Court on the motion of Trustee Kyle L. Carlson for an order dismissing the case of Buehring Properties LLC, BKY 20-31858,

Based on the motion and record,

IT IS ORDERED THAT:

The debtor's Chapter 12 case is hereby dismissed.

Dated:

Michael E. Ridgway
Chief United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

BKY 20-31858

Chapter 12

Buehring Properties LLC,

Debtor.

UNSWORN DECLARATION FOR PROOF OF SERVICE

The undersigned, being an employee of the Chapter 12 Trustee, declares that on the date indicated below, I served the attached Notice of Hearing and Motion for Dismissal upon all entities named below by first class mail postage prepaid and to any entities who are Filing Users, by automatic e-mail notification pursuant to the Electronic Case Filing System:

BUEHRING PROPERTIES LLC
540 W 11TH ST
RUSH CITY, MN 55069

U.S. ATTORNEY
U.S. COURTHOUSE
300 S 4TH STREET
SUITE 600
MINNEAPOLIS, MN 55415

ALL CREDITORS ON ATTACHED MATRIX

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: 11-3-20

/e/ Jamie Swenson

Jamie Swenson
Chapter 12 Office

Label Matrix for local noticing
0864-3
Case 20-31858
District of Minnesota
St Paul
Tue Nov 3 12:30:03 CST 2020

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200 Warren E. Burger Federal Building
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St Paul, MN 55101-1495

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Gold Country Seed
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Internal Revenue Service
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(p)DEERE CREDIT SERVICES INC
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Stearns Bank National Association
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Sam Calvert
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The preferred mailing address (p) above has been substituted for the following entity/entities as so specified
by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).